

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6650 of 1995

SPECIAL CIVIL APPLICATION No 6570 of 1995

AND

SPECIAL CIVIL APPLICATION No 6607 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHARATKUMAR SHIVABHAI JADAV

Versus

DY DIST DEV OFFICER

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Appearance:

MR BN PATEL for Petitioner  
MR RA MISHRA for Respondent No. 1  
MR DA BAMBHANIA for Respondent No. 4

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CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 08/07/96

ORAL JUDGEMENT

Common questions arose in these petitions and therefore, they have been heard together and are being disposed of by this common order. In Special Civil

Application No. 6650 of 1995, the petitioner who was appointed as a Junior Clerk on compassionate ground seeks to challenge the order of his termination dated 29.7.1995 on the ground that he is entitled to be continued in service until his request for grace chances for passing the Post Training Examination under the Gujarat Non-secretariate Clerks and Clerical Typists (Training and Examination) Rules, 1970, is considered. According to the respondent authorities, the said petitioner had failed to pass the examination in the prescribed chances.

In Special Civil Application No. 6570 of 1995, the petitioner who was appointed as a Junior Clerk on compassionate ground has also contended that his services cannot be terminated till all the additional chances were exhausted by the petitioner. The case of the respondents is that this petitioner being a Scheduled Tribe candidate, was required to pass the examination within four chances under the Rules. It is stated that the petitioner had availed of all the four chances and failed and therefore, he was not eligible to continue in service.

In Special Civil Application No.6607/95 also the petitioner was appointed on compassionate ground as Junior Clerk and was a Scheduled Tribe candidate, who could not clear the examination in four chances and apprehends that his services are likely to be terminated and therefore, he should be allowed to be continued in service until all additional chances are exhausted.

It was contended by the learned Counsel for the petitioners that Rule 8(2) of the said Rules provides that the service of a candidate who is appointed on adhoc basis will be terminated only if he does not pass the Post Training Examination as required under the Rules. He therefore, submitted that the said Rule did not provide that the service should be terminated as soon as the specified three chances were exhausted. It was submitted that the additional chances under the third proviso to Rule 6 were also available to the candidate who had failed in specified chances and on clearing the examination in additional chance, it can be said that the candidate has passed the examination as required under the Rules. It was submitted that in view of this plausible interpretation of Rule 8(2), a Division Bench had in the past thought it fit to refer the matter to a Full Bench. That was done in Special Civil Application No. 656 of 1987. A Division Bench consisting of Hon'ble the Chief Justice Mr. P.R.Gokulakrishnan and Hon'ble Mr.Justice R.J.Shah, by their order dated 3.12.1988, in

which after referring to the Division Bench judgement in Special Civil Application No. 3754/86 decided by Hon'ble Mr. Justice S.B. Majumdar and Hon'ble Mr. Justice A.P. Ravani (as Their Lordships then were) on 8th July, 1987, observed that the third proviso to Rule 6 was required to be considered and therefore, the matter was being referred to Full Bench. It however, appears that the Full Bench did not decide that question and disposed of the petition without expressing any opinion regarding the correctness of the judgement as stated by the learned Counsel appearing for both the sides. It was submitted that Hon'ble Mr. Justice M.S. Parikh had passed a detailed interim order on May 2, 1995 in Special Civil Application No. 1904 of 1995 in which it is mentioned that the Full Bench by its order dated 26th July, 1993 had said that it was not necessary to decide the question as it did not survive on account of the petitioner having passed the examination and having been regularly accommodated in the service. Referring to various other decisions of this Court on the point, His Lordship came to the conclusion that interim relief should be granted to enable the employee to be taken back and continued in service till decision was taken on her application for additional chances. There can be no doubt that observations made by Hon'ble Mr. Justice M.S. Parikh in the said interim order are entitled to highest respect. However, the question remains no longer res-integra since the Division Bench judgement in Special Civil Application No. 3476/86 holds the field. Merely because the Full Bench did not go into the issue since the matter had become infructuous so far that petitioner was concerned, it cannot be said that the ratio of the Division Bench judgement dated 8th July, 1987 would in any way become less effective. Even the reasoning by referring judgement of the Division Bench in Special Civil Application No. 656/87 cannot in any way lower the binding effect of the ratio of the decision of the Division Bench in Special Civil Application No. 3754/86 decided on 8th July, 1987. Therefore, for all intent and purposes, the Division Bench judgement in Special Civil Application No. 3754/86 holds the field and as would be seen, squarely covers the contentions which are sought to be raised on behalf of the petitioners.

Under the said Rules, a candidate which means a person selected to be appointed as a Clerk or a Clerk Typist in the Offices specified in Rule 3, before he could be appointed to the post in question, is required to receive Pre-service Training as provided by Rule 5 and to appear at the Post Training Examination and to pass it in not more than 3 chances. If the candidate does not

pass the examination even at the last chance for reasons beyond his control or fails by a very narrow margin, the State Government was empowered to give him one more chance after recording reasons in writing in that regard. This third proviso to Rule 6 has been substituted by Notification dated 28th April, 1978 and now two such additional chances can be given by the State Government. Under Rule 8(1) if the candidate fails to receive the prescribed training or fails to pass the Post Training Examination as required under the Rules, he becomes ineligible for appointment as a regular staff. The Post Training Examination was required to be passed under the Rules. It is to be passed in not more than 3 chances. The expression "specified chances" is defined so as to mean number of chances specified in these Rules in which a person is required to pass the Post Training Examination. Therefore, wherever there is reference to requirement of passing the examination under the Rules, it has obvious reference to the specified chances provided under the Rules viz. three chances under Rule 6. The additional chances under the third proviso to Rule 6 cannot be said to be "specified chances". The question of additional chances would arise only on failure in three specified chances pursuant to which the person has become ineligible for appointment as a regular Clerk. It is because of incurring ineligibility by not clearing the examination in the specified chances that it became necessary to make a provision under sub-rule (2) of Rule 8 that those who do not clear the Post Training Examination as required by the Rules, should be terminated if they were already appointed on stop-gap basis. By the combined reading of Rules 6 and 8, it becomes clear that the expression "as required under these Rules" in Rule 8(2) has a clear reference to the specified chances in which a person is required to pass the Post Training Examination under these Rules. Therefore, if the Government has issued a circular requiring the ad-hoc services of the candidates who have failed to clear the examination in the specified chances, it cannot be said that any arbitrary or illegal action is taken in the matter.

Under the scheme for giving compassionate appointments, there is a clause which clearly provides that no concession such as exemption from Pre-service Departmental Examination or in service Departmental Examination or any other concession in service matter shall be granted to the compassionate appointees. Therefore, the petitioners cannot claim to continue in service after having failed to clear the examination in the prescribed chances, nor can they claim any exemption

from the provisions of the Rules which empower the Government to terminate their service on their failure to clear the examination as required by the Rules in specified chances.

A Division Bench of this Court consisting of Hon'ble Mr. Justice S.B. Majumdar and Hon'ble Mr. Justice A.P. Ravani (as Their Lordships then were) in their decision dated 8th July, 1987 in Special Civil Application No. 3754/86, after considering the provisions of Rule 6 and 8 while dealing with the contentions that such employees should be allowed to continue till their representation is decided and their termination order should be stayed, in terms held that merely because a representation is made for additional chance that would not entitle the candidate to continue in service. It is evident from paragraph 4 of the judgement that third proviso to Rule 6 was clearly in the minds of Their Lordships and it is in context of that provision that it has been held that a person who has failed in the specified chances cannot claim a right to continue on the strength of his application or representation for the additional chance. For the reasons given hereinabove, I am in respectful agreement with the ratio of decision in Special Civil Application No. 3754 of 1986. The interim order passed in another matter cannot over-ride the effect of a binding Division Bench judgement and therefore, the reasoning given by Hon'ble Mr. Justice M.S. Parikh on May 2, 1995 for passing an interim order, cannot be invoked by the petitioners in the face of the clear ratio of the Division Bench holding that such candidates are not entitled to continue until their representation is decided for the additional chance. Recently, on 20th June, 1996, Hon'ble Miss. Justice R.M. Doshit confronted with the same question has rejected the contention in Special Civil Application No. 6646 of 1995 and Special Civil Application No. 7067 of 1995 and I am in respectful agreement with the ratio of this decision. Even before that, Hon'ble Mr. Justice S.M. Soni had considered the provisions of Rules 6 and 8 in Special Civil Application No. 2791 of 1994. His Lordships in the judgement delivered on 23rd Sept. 1994 negatived the contentions which are sought to be raised in the present petitions, upholding the order of termination which was passed consequent upon the concerned candidate not clearing the examination even after being given the specified chances to clear examination. In this view of the matter, the reliance placed on behalf of the petitioners on the decisions of Hon'ble Mr. Justice N.J. Pandya in Civil Revision Application No. 1291/94 rendered on 5th May, 1995,

Hon'ble Mr.Justice A.P.Ravani (as His Lordship then was) in Special Civil Application No. 7532/88 decided on 13.12.1988 and Hon'ble Mr.Justice R.A.Mehta in Special Civil Application No. 6654/90 decided on October 12, 1990 cannot assist the petitioners.

Under the above circumstances, these petitions must fail and are rejected. Notice is discharged in each of these matters with no order as to costs. Interim relief stands vacated.

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